

DECISION

27824
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-213464

DATE: March 27, 1984

MATTER OF: Northwest Regional Educational Laboratory

DIGEST:

Procuring agency informed offerors how much higher (in percentage terms) their proposed costs were when compared with the government's cost estimate for the work. The failure of the agency to provide offerors with the accurate percentages involved prevented the protester--given the significantly greater percentage error committed with respect to the protester's proposal--from competing on an equal basis with the awardee.

Northwest Regional Educational Laboratory (Northwest) protests the award of a cost-reimbursement contract to Far West Laboratory (Far West) under request for proposals (RFP) No. NIE-R-83-0011, issued by the National Institute of Education (NIE), Department of Education, for the National Adult Literacy Project. The RFP informed bidders that:

"While cost may not be a controlling factor, cost will be considered in the negotiation and award of a contract [; however,] technical quality . . . [will be] given greater priority than cost."

Northwest contends that NIE made a mistake in its written discussions with both Northwest and Far West and that this mistake resulted in Northwest offering a significantly higher proposal price than Far West, thus preventing Northwest from competing on an equal basis with Far West.

We sustain the protest.

In response to the RFP, six firms submitted proposals. After the technical evaluation, NIE determined that only the proposals of Northwest and Far West were technically acceptable. Northwest's technical score was 88.0 and its cost proposal \$1,215,530, while Far West's technical score was 87.4 and its cost proposal \$956,527.

628415

NIE then conducted negotiations with both offerors by means of written discussions. The cost proposals of both offerors exceeded the government estimate of \$850,000 and, in an effort to obtain cost proposals in line with the government estimate, NIE decided to advise the offerors that their proposals were higher than the government estimate. Unfortunately, NIE, after further deciding to convey this advice in percentage terms, conveyed erroneous percentage information. Thus, instead of telling the offerors the correct percentages (Northwest - 43 percent; Far West - 13 percent), the offerors were instead told:

Northwest

"Offeror's cost proposal is approximately 29-31 percent higher than the Government's estimate and available funds for this project. Offeror should review its proposal in an effort to identify areas where cost reductions could be effected and state what impact these reductions have on the proposed scope of work."

Far West

"Offeror's cost proposal is approximately 10-12 percent higher than the Government's estimate and available funds for this project. Offeror should review its proposal in an effort to identify areas where cost reductions could be effected and state what impact these reductions have on the proposed scope of work."

After an evaluation of best and final offers by a Technical Review Panel (Panel), the results were as follows:

	Technical Score	Cost Proposal
Northwest	92.6	\$932,195
Far West	84.4	862,444
Difference	8.2	\$ 69,751

The Panel recommended that award be made to Northwest based on the perceived technical superiority of its proposal. However, the contracting officer, despite considering the "complexity" of Far West's model as a weakness, determined

that the Panel had not provided sufficient evidence that the weakness in Far West's proposal could not be overcome through proper contract administration; consequently, the contracting officer treated the proposals as technically equivalent. Since Far West offered a cost proposal substantially lower than Northwest's, the contracting officer concluded that award to Far West would be in the best interests of the government. The contract was awarded to Far West.

Northwest argues that the erroneous advice on the percentages conveyed to it caused Northwest to submit a significantly higher cost proposal than it otherwise would have, thus preventing Northwest from competing on an equal basis with Far West.

Northwest argues that it and Far West both reduced their offers based on the erroneous percentages furnished to them. Specifically, Northwest notes that the final cost reductions proposed by the offerors almost exactly mirror these inaccurate percentages. And, as noted by Northwest, NIE's percentage error (about 13 percent) in regard to Northwest's cost proposal was significantly greater than NIE's percentage error (about 1 percent) in regard to Far West's cost proposal. Northwest finally argues that it should have been given an opportunity to revise its best and final proposal--in line with the true mathematical percentage involved--since the "Government's erroneous information . . . clearly caused us to come to a faulty conclusion based upon NIE's false information."

NIE admits that it erred in the cost proposal discussions, as Northwest alleges. However, NIE's contracting officer states that it is uncertain that award would have gone to Northwest had the mistake not been made since Northwest's technical proposal might have been weaker if it lowered its cost proposal.

While the content and extent of discussions are normally a judgment for the procuring agency, we will review such decisions where the discussions operated to the bias or prejudice of any competitor. Technical Data Systems of the Nation's Capital, Inc., B-202591, August 18, 1981, 81-2 CPD 153. A fundamental principle of competitive procurement is that offerors must be treated equally and be provided a common basis to revise their proposals. PRC Information Sciences Company, 56 Comp. Gen. 768 (1977), 77-2 CPD 11.

In the instant case, it is clear that if NIE had simply informed the offerors that their cost proposals were either too high or in excess of the government estimate, then NIE would have met the requirement for meaningful discussions by alerting the offerors to a perceived weakness in their proposals. However, NIE went further than merely alerting the offerors to a perceived weakness in their proposals by using percentages to attempt to bring the offerors' cost proposals in line with the government estimate. By using erroneous figures in so doing, NIE evidently caused Northwest to submit a significantly higher revised cost proposal than the company otherwise would have submitted. We think this conclusion is warranted, given that the revised cost proposals of both offerors reflected the erroneous percentages specified during the discussions. Accordingly, we conclude that NIE did not provide Northwest with an equal opportunity to revise its cost proposal, given the significantly greater error NIE committed with respect to Northwest's proposal.

Given the close competition and the significantly unequal advice conveyed to the offerors, we conclude that NIE's error materially prejudiced Northwest. Therefore, we sustain the protest. Nevertheless, NIE explains that:

" . . . this project is a priority to the NIE and the Secretary of Education. Further, the work is substantially underway and a major conference [was] scheduled for January 1984."

Given the performance status of the contract, we cannot recommend that Northwest (and Far West) be given another opportunity to submit new proposals based on the correct percentages.

Milton J. Fowler
for Comptroller General
of the United States